# In the District Court of the United States Southern District of California, Northern Division

No. 4575 IN BANKRUPTCY

IN THE MATTER OF THE PETITION OF LINDSAY-STRATHMORE IRRIGATION DISTRICT, AN INSOLVENT TAXING AGENCY

## STATEMENT OF JURISDICTION UNDER RULE 12 (1), OF THE SUPREME COURT OF THE UNITED STATES

The appellate jurisdiction of the Supreme Court of the United States in this case is invoked under the Act of Congress approved August 24, 1937, Public No. 352, 75th Congress, Chapter 754, 1st Session, a copy of which Act is appended hereto.

There is involved in this proceeding the validity of Chapter X as added to the Bankruptcy Act of July 1, 1898, and Acts amendatory thereof and supplementary thereto, by the Act approved August 16, 1937, Public No. 302, 75th Congress, Chapter 657, 1st Session, which Act was declared unconstitutional by the District Court in this case, and which entered a judgment on December 2, 1937, dismissing the petition of Lindsay-Strathmore Irrigation District for confirmation of a plan for the composition and readjustment of its debts, which

petition was filed under authority of the Act of August 16, 1937, on the ground that such Act was unconstitutional and the proceedings thereunder void. This appeal is taken from said judgment of dismissal of December 2, 1937; petition for appeal was filed December 13, 1937.

The Act of August 16, 1937, Chapter X of the Bankruptcy Act, confers jurisdiction upon courts of bankruptcy in addition to the jurisdiction otherwise exercised, for the composition of indebtedness of or authorized by any of the taxing agencies or instrumentalities, as set out in said Act, including a taxing agency of the character of the Lindsay-Strathmore Irrigation District, petitioner for composition herein. A copy of the Act of August 16, 1937, is appended hereto.

On September 21, 1937, the Lindsay-Strathmore Irrigation District filed its petition in the office of the Clerk of the District Court of the United States in and for the Southern District of California alleging among other things that petitioner is an irrigation district duly organized and existing pursuant to and by virtue of an Act of the Legislature of the State of California, known as the "California Irrigation District Act," approved March 31, 1937, and Acts amendatory thereof and supplementary thereto, and comprises 15,260 acres of land located wholly in the County of Tulare, State of California, within the territorial jurisdic-

tion of the above entitled Court; that petitioner is a taxing agent or instrumentality within the meaning and intent of the Act of Congress approved August 16, 1937, and is entitled to the relief provided by said Act; that the petitioner is insolvent and unable to meet its debts as they mature and desires to effect a plan of composition of its debts; that the debts of petitioner which are affected by the proposed plan of composition as thereinafter set out consist of outstanding bonds in the principal aggregate amounts of $1,192,000.00 and $235,000.00, respectively, of two issues of bonds duly issued by petitioner under the provisions of said California Irrigation District Act, and the matured and unpaid interest thereon, as described in said petition; that a plan for the composition and readjustment of said debts of petitioner as set out in said petition has been accepted and approved by petitioner and by creditors of petitioner owning not less than 51 per cent in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner), to-wit, creditors owning approximately 87 per cent of such securities, have in writing accepted said plan and consented to the filing of the petition. The plan proposed the payment to the holders of said outstanding bonds an amount equal to 59.978 cents for each dollar of the principal amount of each bond in full payment, discharge, and satisfac-

tion of all amounts of principal and interest payable on such bonds under the terms thereof, which payment was to be made from the proceeds of a loan which the Reconstruction Finance Corporation, an agency of the United States of America, has agreed to make petitioner.

The petition prayed among other things for an order approving the petition as properly filed, for an order fixing time and place for hearing and for notice to creditors; for an order enjoining and staying pending determination of the matter, the commencement or continuation of suits against petitioner or any officer thereof an account of the securities affected by the plan; for an interlocutory decree approving and affirming the plan and putting it into effect and for a final decree discharging petitioner from all debts and liabilities upon completion of the plan and in accordance therewith.

On September 21, 1937, the Court entered an order approving the petition as properly filed under the Act of August 16, 1937; and on September 22, 1937, issued an order to creditors of the Lindsay-Strathmore Irrigation District to show cause why injunction should not issue and why an interlocutory decree making the plan temporarily effective should not be entered, which order was returnable on October 11, 1937. This order was duly served upon the creditors of the petitioner.

Thereafter, certain creditors of the petitioner, being holders of bonds of the issues as described

in the petition, filed motions to dismiss the petition on the ground that the Court was without jurisdiction to entertain the petition, and the plan of readjustment set out therein, because the Act under which the proceeding was brought, being the Act of August 16, 1937, was unconstitutional and void.

The cause coming on for hearing on October 11, 1937, the Court on that day issued a certificate to the Attorney General of the United States in accordance with said Act of August 24, 1937, to the effect that the constitutionality of the Act of Congress of August 16, 1937, Public, No. 302, 75th Congress, was drawn in question and granting authority to the United States to intervene and become a party for presentation of evidence and argument upon the question of the constitutionality of said Act; and the cause was continued for further hearing.

Thereafter, on November 8, 1937, the United States filed its petition in intervention in the proceeding under the authority of said Act of August 24, 1937, praying for an order allowing it to intervene in said cause under the provisions of said Act; and on said date, an order was entered by the United States District Judge granting the petition of the United States to intervene in said cause, and thereafter hearing was had, at which hearing argument was made by the United States in support of the constitutionality of Chapter X of the Bankruptcy Act, Act of August 16, 1937.

Thereafter, on November 13, 1937, an opinion was filed by the United States District Court holding that Chapter X of the Bankruptcy Act, Act of August 16, 1937, in so far as it applies to irrigation districts of the type of petitioner, was unconstitutional and void; and on December 2, 1937, judgment was entered by the District Court vacating the order to show cause and dismissing the petition of Lindsay-Strathmore Irrigation District with prejudice solely on the ground that the statute under which the proceeding was brought was unconstitutional. Said judgment allowed an exception to the debtor, Lindsay-Strathmore Irrigation District, and to the intervenor. A copy of the opinion of the Court and of the judgment of dismissal filed December 2, 1937, are appended hereto.

The Act of August 16, 1937, Public, No. 302, 75th Congress, is an Act of Congress affecting the public interest and the decision of the District Court is against the constitutionality of said Act.

December 13, 1937.

UNITED STATES OF AMERICA, By:
/ SAM E. WHITAKER,
Sam E. Whitaker,
*Assistant Attorney General.*
/ BEN HARRISON,
Ben Harrison,
*United States Attorney for the Southern District of California.*

[PUBLIC—No. 352—75TH CONGRESS]

[Chapter 754—1st Session]

[H. R. 2260]

# AN ACT

To provide for intervention by the United States, direct appeals to the Supreme Court of the United States, and regulation of the issuance of injunctions, in certain cases involving the constitutionality of Acts of Congress, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever the constitutionality of any Act of Congress affecting the public interest is drawn in question in any court of the United States in any suit or proceeding to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, the court having jurisdiction of the suit or proceeding shall certify such fact to the Attorney General. In any such case the court shall permit the United States to intervene and become a party for presentation of evidence (if evidence is otherwise receivable in such suit or proceeding) and argument upon the question of the constitutionality of such Act. In any such suit or proceeding the United States shall, subject to the applicable provisions of law, have all the rights of a party and the liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the constitutionality of such Act.

SEC. 2. In any suit or proceeding in any court of the United States to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is a party, or in which the United States has intervened and become a party, and in which the decision is against the constitutionality of any Act of Congress, an appeal may be taken directly to the Supreme Court of the United States by the United States or any other party to such suit or proceeding upon application therefor or notice thereof within thirty days after the entry of a final or interlocutory judgment, decree, or order; and in the event that any such appeal is taken, any appeal or cross-appeal by any party to the suit or proceeding taken previously, or taken within sixty days after notice of an appeal under this section, shall also be or be treated as taken directly to the Supreme Court of the United States. In the event that an appeal is taken under this section, the record shall be made up and the case docketed in the Supreme Court of the United States within sixty days from the time such appeal is allowed, under such rules as may be prescribed by the proper courts. Appeals under this section shall be heard by the Supreme Court of the United States at the earliest possible time and shall take precedence over all other matters not of a like character. This section shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law.

SEC. 3. No interlocutory or permanent injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any Act of Congress upon the ground that such Act or any part thereof is repugnant to the Constitution of the United States shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge. When any such application is presented to a judge, he shall immediately request the senior circuit judge (or in his absence, the presiding circuit judge) to the circuit in which such district court is located to designate two other judges to participate in hearing and determining such application. It shall be the duty of the senior circuit judge or the presiding circuit judge, as the case may be, to designate immediately two other judges from such circuit for such purpose, and it shall be the duty of the judges so designated to participate in such hearing and determination. Such application shall not be heard or determined before at least five days' notice of the hearing has been given to the Attorney General and to such other persons as may be defendants in the suit: *Provided*, That if of opinion that irreparable loss or damage would result to the petitioner unless a temporary restraining order is granted, the judge to whom the appli-

cation is made may grant such temporary restraining order at any time before the hearing and determination of the application, but such temporary restraining order shall remain in force only until such hearing and determination upon notice as aforesaid, and such temporary restraining order shall contain a specific finding, based upon evidence submitted to the court making the order and identified by reference thereto, that such irreparable loss or damage would result to the petitioner, and specifying the nature of the loss or damage. The said court may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension, in whole or in part, until decision upon the application. The hearing upon any such application for an interlocutory or permanent injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day. An appeal may be taken directly to the Supreme Court of the United States upon application therefor or notice thereof within thirty days after the entry of the order, decree, or judgment granting or denying, after notice and hearing, an interlocutory or permanent injunction in such case. In the event that an appeal is taken under this section, the record shall be made up and the case docketed in the Supreme Court of the United States within sixty days from the time such appeal is allowed, under such rules as may be prescribed by the proper courts. Appeals under this section shall be heard by the Supreme Court of

the United States at the earliest possible time and shall take precedence over all other matters not of a like character. This section shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law.

SEC. 4. Section 13 of the Judicial Code, as amended (U. S. C. 1934 edition, title 28, sec. 17), is hereby amended to read as follows:

"SEC. 13. Whenever any district judge by reason of any disability or absence from his district or the accumulation or urgency of business is unable to perform speedily the work of his district, the senior circuit judge of that circuit, or, in his absence, the circuit justice thereof, shall designate and assign any district judge of any district court within the same judicial circuit to act as district judge in such district and to discharge all the judicial duties of a judge thereof for such time as the business of the said district court may require. Whenever it is found impracticable to designate and assign another district judge within the same judicial circuit as above provided and a certificate of the needs of any such district is presented by said senior circuit judge or said circuit justice to the Chief Justice of the United States, he, or in his absence the senior associate justice, shall designate and assign a district judge of an adjoining judicial circuit if practicable, or if not practicable, then of any judicial circuit, to perform the duties of district judge and hold a district court in any

such district as above provided: *Provided, however,* That before any such designation or assignment is made the senior circuit judge of the circuit from which the designated or assigned judge is to be taken shall consent thereto. All designations and assignments made hereunder shall be filed in the office of the clerk and entered on the minutes of both the court from and to which a judge is designated and assigned, as well as on the minutes of the Supreme Court of the United States, to the clerk of which both of such other clerks shall immediately report the fact and period of assignment."

SEC. 5. As used in this Act, the term "court of the United States" means the courts of record of Alaska, Hawaii, and Puerto Rico, the United States Customs Court, the United States Court of Customs and Patent Appeals, the Court of Claims, any district court of the United States, any circuit court of appeals, and the Supreme Court of the United States; the term "district court of the United States" includes the District Court of the United States for the District of Columbia; the term "circuit court of appeals" includes the United States Court of Appeals for the District of Columbia; the term "circuit" includes the District of Columbia; the term "senior circuit judge" includes the Chief Justice of the United States Court of Appeals for the District of Columbia; and the term "judge" includes justice.

Approved, August 24, 1937.

[PUBLIC—No. 302—75TH CONGRESS]

[Chapter 657—1st Session]

[H. R. 5969]

# AN ACT

To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and Acts amendatory thereof and supplementary thereto

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States," as approved July 1, 1898, and Acts amendatory thereof and supplementary thereto be, and they are hereby, amended by adding thereto a new chapter, to be designated "chapter X," to be and read as follows:

## "CHAPTER X

### "ADDITIONAL JURISDICTION

"SEC. 81. This Act and proceedings thereunder are found and declared to be within the subject of bankruptcies and, in addition to the jurisdiction otherwise exercised, courts of bankruptcy shall exercise original jurisdiction as provided in this chapter for the composition of indebtedness of, or authorized by, any of the taxing agencies or instrumentalities hereinafter named, payable (a) out of assessments or taxes, or both, levied against and constituting liens upon property in any of said tax-

ing agencies or instrumentalities, or (b) out of property acquired by foreclosure of any such assessments or taxes or both, or (c) out of income derived by such taxing agencies or instrumentalities from the sale of water or power or both, or (d) from any combination thereof; (1) Drainage, drainage and levee, levee, levee and drainage, reclamation, water, irrigation, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts, organized or created for the purpose of constructing, improving, maintaining, and operating certain improvements or projects devoted chiefly to the improvement of lands therein for agricultural purposes; or (2) local improvement districts such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or (3) local improvement districts such as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or (4) public-school districts or public-school authorities organized or created for the purpose of constructing, maintaining, and operating public schools or public-school facilities; or (5) local improvement districts such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities; or (6) any city, town, village, borough, township, or other municipality: *Provided, however,*

That if any provision of this chapter, or the application thereof to any such taxing agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different taxing agency or district or class thereof or to any other or different circumstances, shall not be affected by such holding.

"DEFINITION

"SEC. 82. The following terms as used in this chapter, unless a different meaning is plainly required by the context, shall be construed as follows:

"That the term 'petitioner' shall include any taxing agency or instrumentality referred to in section 81 of this chapter.

"The term 'security' shall include bonds, notes, judgments, claims, and demands, liquidated or unliquidated, and other evidences of indebtedness, either secured or unsecured, and certificates of beneficial interest in property.

"The term 'creditor' means the holder of a security or securities.

"Any agency of the United States holding securities acquired pursuant to contract with any petitioner under this chapter shall be deemed a creditor in the amount of the full face value thereof.

"The term 'security affected by the plan' means a security as to which the rights of its holder are

proposed to be adjusted or modified materially by the consummation of a composition agreement.

"The singular number includes the plural and the masculine gender the feminine.

"COMPOSITIONS

"SEC. 83. (a) Any petitioner may file a petition hereunder stating that the petitioner is insolvent or unable to meet its debts as they mature and that it desires to effect a plan for the composition of its debts. The petition shall be filed with the court in whose territorial jurisdiction the petitioner or the major part thereof is located, and, in the case of any unincorporated tax or special-assessment district having no officials of its own, the petition may be filed by its governing authority or the board or body having authority to levy taxes or assessments to meet the obligations to be affected by the plan of composition. The petition shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in lieu of the fees required to be collected by the clerk under other applicable chapters of the Uniform Bankruptcy Act of 1898, as amended. The petition shall state that a plan of composition has been prepared, is filed and submitted with the petition, and that creditors of the petitioner owning not less than 51 per centum in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner), have accepted it in writing. There shall be filed with the petition a list of all known

creditors of the petitioner, together with their addresses so far as known to petitioner, and description of their respective securities showing separately those who have accepted the plan of composition, together with their separate addresses, the contents of which list shall not constitute admissions by the petitioner in a proceeding under this chapter or otherwise. Upon the filing of such a petition the judge shall enter an order either approving it as properly filed under this chapter, if satisfied that such petition complies with this chapter and has been filed in good faith, or dismissing it, if not so satisfied.

"The 'plan of composition,' within the meaning of this chapter, may include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through issuance of new securities of any character, or otherwise, and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire.

"No creditor shall be deemed to be affected by any plan of composition unless the same shall affect his interest materially, and in case any controversy shall arise as to whether any creditor or class of creditors shall or shall not be affected, the issue shall be determined by the judge, after hearing, upon notice to the parties interested.

"For all purposes of this chapter any creditor may act in person or by an attorney or a duly au-

thorized agent or committee. Where any committee, organization, group, or individual shall assume to act for or on behalf of creditors, such committee, organization, group, or individual shall first file with the court in which the proceeding is pending a list of the creditors represented by such committee, organization, group, or individual, giving the name and address of each such creditor, together with a statement of the amount, class, and character of the security held by him, and attach thereto copies of the instrument or instruments in writing signed by the owners of the bonds showing their authority, and shall file with the list a copy of the contract or agreement entered into between such committee, organization, group, or individual and the creditors represented by it or them, which contract shall disclose all compensation to be received, directly or indirectly, by such committee, organization, group, or individual, which agreed compensation shall be subject to modification and approval by the court.

"(b) Upon approving the petition as properly filed, or at any time thereafter, the judge shall enter an order fixing a time and place for a hearing on the petition, which shall be held within ninety days from the date of said order, and shall provide in the order that notice shall be given to creditors of the filing of the petition and its approval as being properly filed, and of the time and place for the hearing. The judge shall prescribe the form of the notice, which shall specify the manner in which

claims and interests of creditors shall be filed or evidenced, on or before the date fixed for the hearing. The notice shall be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the jurisdiction of the court, and in such other paper or papers having a general circulation among bond dealers and bondholders as may be designated by the court, and the judge may require that it may be published in such other publication as he may deem proper. The judge shall require that a copy of the notice be mailed, postage prepaid, to each creditor of the petitioner named in the petition at the address of such creditor given in the petition, or if no address is given in the petition for any creditor and the address of such creditor cannot with reasonable diligence be ascertained, then a copy of the notice shall be mailed, postage prepaid, to such creditor addressed to him as the judge may prescribe. All expense of giving notice as herein provided shall be paid by the petitioner. The notice shall be first published, and the mailing of copies thereof shall be completed at least sixty days before the date fixed for the hearing.

"At any time not less than ten days prior to the time fixed for the hearing, any creditor of the petitioner affected by the plan may file an answer to the petition controverting any of the material allegations therein and setting up any objection he may have to the plan of composition. The judge may continue the hearing from time to time if the per-

centage of creditors required herein for the confirmation of the plan shall not have accepted the plan in writing, or if for any reason satisfactory to the judge the hearing is not completed on the date fixed therefor. At the hearing, or a continuance thereof, the judge shall decide the issues presented and unless the material allegations of the petition are sustained, shall dismiss the proceeding. If, however, the material allegations of the petition are sustained, the judge shall classify the creditors according to the nature of their respective claims and interests: *Provided, however,* That the holders of all claims, regardless of the manner in which they are evidenced, which are payable without preference out of funds derived from the same source or sources shall be of one class. The holders of claims for the payment of which specific property or revenues are pledged, or which are otherwise given preference as provided by law, shall accordingly constitute a separate class or classes of creditors.

"At the hearing, or a continuance thereof, the judge may refer any matters to a special master for consideration, the taking of testimony, and a report upon special issues, and may allow reasonable compensation for the services performed by such special master, and the actual and necessary expenses incurred in connection with the proceeding, including compensation for services rendered and expenses incurred in obtaining the deposit of securities and the preparation of the plan, whether

such work may have been done by the petitioner or by committees or other representatives of creditors, and may allow reasonable compensation for the attorneys or agents of any of the foregoing, and may apportion the amount so determined among the parties to the proceeding as may be just: *Provided, however,* That no fees, compensation, reimbursement, or other allowances for attorneys, agents, committees, or other representatives of creditors shall be assessed against the petitioner or paid from any revenues, property, or funds of the petitioner except in the manner and in such sums, if any, as may be provided for in the plan of composition. An appeal may be taken from any order making such determination or award to the United States Circuit Court of Appeals for the circuit in which the proceeding under this chapter is pending, independently of other appeals which may be taken in the proceeding, and such appeal shall be heard summarily.

"On thirty days' notice by any creditor to petitioner, the judge, if he finds that the proceeding has not been prosecuted with reasonable diligence, or that it is unlikely that the plan will be accepted by said proportion of creditors, may dismiss the proceeding.

"(c) Upon entry of the order fixing the time for the hearing, or at any time thereafter, the judge may upon notice enjoin or stay, pending the determination of the matter, the commencement or continuation of suits against the petitioner, or any

officer or inhabitant thereof, on account of the securities affected by the plan, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under any such securities, or any suit or process to levy upon or enforce against any property acquired by the petitioner through foreclosure of any such tax lien or special assessment lien, except where rights have become vested, and may enter an interlocutory decree providing that the plan shall be temporarily operative with respect to all securities affected thereby and that the payment of the principal or interest, or both, of such securities shall be temporarily postponed or extended or otherwise readjusted in the same manner and upon the same terms as if such plan had been finally confirmed and put into effect, and upon the entry of such decree the principal or interest, or both, of such securities which have otherwise become due, or which would otherwise become due, shall not be or become due or payable, and the payment of all such securities shall be postponed during the period in which such decree shall remain in force, but shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the petitioner; or (b) any of the property or revenues of the petitioner necessary for essential governmental purposes; or (c) any income-producing property, unless the plan of composition so provides.

"(d) The plan of composition shall not be confirmed until it has been accepted in writing, by or on behalf of creditors holding at least two-thirds of the aggregate amount of claims of all classes affected by such plan and which have been admitted by the petitioner or allowed by the judge, but excluding claims owned, held, or controlled by the petitioner: *Provided, however,* That it shall not be requisite to the confirmation of the plan that there be such acceptance by any creditor or class of creditors (a) whose claims are not affected by the plan; or (b) if the plan makes provision for the payment of their claims in cash in full; or (c) if provision is made in the plan for the protection of the interests, claims, or lien of such creditors or class of creditors.

"(e) At the conclusion of the hearing, the judge shall make written findings of fact and his conclusions of law thereon, and shall enter an interlocutory decree confirming the plan if satisfied that (1) it is fair, equitable, and for the best interests of the creditors and does not discriminate unfairly in favor of any creditor or class of creditors; (2) complies with the provisions of this chapter; (3) has been accepted and approved as required by the provisions of subdivision (d) of this section; (4) all amounts to be paid by the petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable; (5) the offer of the plan and its acceptance are in good faith; and

(6) the petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan. If not so satisfied, the judge shall enter an order dismissing the proceeding.

"Before a plan is confirmed, changes and modifications may be made therein, with the approval of the judge after hearing upon such notice to creditors as the judge may direct, subject to the right of any creditor who shall previously have accepted the plan to withdraw his acceptance, within a period to be fixed by the judge and after such notice as the judge may direct, if, in the opinion of the judge, the change or modification will be materially adverse to the interest of such creditor, and if any creditor having such right of withdrawal shall not withdraw within such period, he shall be deemed to have accepted the plan as changed or modified: *Provided, however,* That the plan as changed or modified shall comply with all the provisions of this chapter and shall have been accepted in writing by the petitioner. Either party may appeal from the interlocutory decree as in equity cases. In case said interlocutory decree shall prescribe a time within which any action is to be taken, the running of such time shall be suspended in case of an appeal until final determination thereof. In case said decree is affirmed, the judge may grant such time as he may deem proper for the taking of such action.

"(f) If an interlocutory decree confirming the plan is entered as herein provided, the plan and

said decree of confirmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities, or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. And thereupon the court shall enter a final decree determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged from all debts and liabilities dealt with in the plan except as provided therein, and that the plan is binding upon all creditors affected by it, whether secured or unsecured, and whether or not their claims have been filed or evidenced, and, if filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have, accepted it.

"(g) A certified copy of the final decree, or of any other decree or order entered by the court or the judge thereof, in a proceeding under this chapter, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the decree or order was made. A certified copy of an order providing for the transfer of any property dealt with by the plan shall be evidence of the transfer of title accordingly and, if recorded

as conveyances are recorded, shall impart the same notice that a deed, if recorded, would impart.

"(h) This chapter shall not be construed as to modify or repeal any prior, existing statute relating to the refinancing or readjustment of indebtedness of municipalities, political subdivisions, or districts: *Provided, however,* That the initiation of proceedings or the filing of a petition under section 80 shall not constitute a bar to the same taxing agency or instrumentality initiating a new proceeding under section 81 thereof.

"(i) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor.

"TERMINATION OF JURISDICTION

"SEC. 84. Jurisdiction conferred on any court by section 81 shall not be exercised by such court after June 30, 1940, except in respect of any proceeding initiated by filing a petition under section 83 (a) on or prior to June 30, 1940."

Approved, August 16, 1937.

# In the District Court of the United States for the Southern District of California, Northern Division

No. 4575–Bkcy

IN THE MATTER OF THE PETITION OF LINDSAY-STRATHMORE IRRIGATION DISTRICT, AN INSOLVENT TAXING AGENCY, FOR CONFIRMATION OF A PLAN FOR THE COMPOSITON AND READJUSTMEINT OF ITS DEBTS

## OPINION

Appearances:

For Petitioner:

MESSRS. MITCHELL, SILBERBERG, ROTH & KNUPP,

JAMES R. MCBRIDE,

*Los Angeles, California.*

For Respondents:

W. COBURN COOK,

*Turlock, California.*

For Intervenor:

BEN HARRISON,

*United States Attorney, Los Angeles, California.*

HENRY A. JULICHER,

*Attorney, Department of Justice, Washington, D. C.*

YANKWICH, District Judge:

Lindsay-Strathmore Irrigation District, which we shall call "the district," is an irrigation district, organized under the "California Irrigation District Act," approved March 31, 1897, and the Acts amending and supplementing it. It comprises approximately 15,260 acres of land located in Tulare County, California, and is organized for the purpose of constructing, improving, maintaining, and operating improvement projects and works devoted chiefly to the improvement of lands within its boundaries for agricultural purposes. Alleging that it is a taxing agency and instrumentality within the meaning of Chapter X of the Bankruptcy Act, approved August 16, 1937, it filed on September 21, 1937, a "petition for confirmation of a plan for composition or re-adjustment of its debt." The insolvency arises by reason of its inability to meet its obligations as to two bond issues issued by it under the provisions of the California Irrigation District Act. Attached to the petition is a plan of composition and re-adjustment, accepted by the petitioner and creditors owning approximately 87 percent in amount of the securities affected by the plan, who have consented to the filing of the petition. It is aimed to pay in cash to the holders of the bonds a sum equal to 59.978 cents for each dollar of the principal amount of each bond, in full payment, discharge, and satisfaction of all amounts of principal and interest due on such bond. The payment to be made out of a

loan which the Reconstruction Finance Corporation has authorized and agreed to make to the district. Upon the filing of the petition, I entered an order approving it as properly filed under Chapter X, and set December 3, 1937, as the time and place for the hearing on the petition. On September 30, 1937, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, and of the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, trustee for Eva A. Parrington, trust, and C. A. Moss gave notice of motion to dismiss the petition upon the ground, among others, that the Court was without jurisdiction of the subject matter of the proceeding and that Chapter X of the Bankruptcy Act—Sections 81 to 84 inclusive—is unconstitutional and void. The matter coming up for hearing on October 11, 1937, I certified to the Attorney General the fact that the constitutionality of the Act was drawn in question, under the provisions of the judiciary reform Act approved August 24, 1937 (Public, No. 352, 75th Congress, Chapter 754), and allowed the Government to intervene and defend the Act's constitutionality.

Chapter X, Sections 81 to 84 of the Bankruptcy Act, under which the petition was filed, were intended to supplant Section 80 of the Act, which was stricken down by the decision of the Supreme Court in *Ashton* v. *Cameron County Water District* (1936), 298 U. S. 513.

The presumption in favor of constitutionality calls for a ruling in favor of the validity of an Act of the Congress and commands us to resolve all doubts in favor of validity unless the contrary is made to appear beyond a reasonable doubt. In effect, this means that we must sustain the new Act unless the decision in *Ashton* v. *Cameron County District, supra,* compels a different conclusion. This is especially true when we consider an Act passed to replace an Act invalidated by our highest court. (See *Wright* v. *Vinton Branch* (1937) 300 U. S. 440). It is not necessary to enter into a detailed comparison of the two Acts. While the aim of the old Act was "re-adjustment" of debts of insolvent public agencies named in it, the new Act aims at "composition" of the debts of the agencies coming under it, insolvency existing. Both plans contemplate a voluntary petition containing a plan approved by a certain number of its creditors—thirty to fifty-one per cent in the old Act, fifty-one per cent in the new Act, the preliminary approval by the court of the petition, due notice of hearing for final confirmation of the plan of reorganization by the Court, if approved by more than a majority of the creditors, the percentage varying in the old Act from fifty-one upward and being fixed at two-thirds in all cases in the new Act. The confirmation of the plan in both instances and the payment of the consideration, under both enactments, has the effect of discharging the debtor from all debts or liabilities covered by the plan.

The new Act disowns, as did the old one, any intention to interfere with the exercise of State governmental authority. Subdivision (i) of Section 84 reads:

> (i) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures thereof.

The agencies to which the old Act applied included:

> (a) Any municipality or other political subdivision of any State, including (but not hereby limiting the generality of the foregoing) and county, city, borough, village, parish, town, or township, unincorporated tax or special assessment district, and any school, drainage, *irrigation,* reclamation, levee, sewer, or paving, sanitary, port, improvement, or other districts (hereinafter referred to as a "taxing district") (Bankruptcy Act, Section 80 (a)).

The new statute is made to apply to—

> (1) Drainage, drainage and levee, levee, levee and drainage, reclamation, water, *irrigation,* or other similar districts, commonly designated as agricultural improvement districts or local improvement districts organized or created for the purpose of constructing, improving, maintaining, and operating certain improvements or projects devoted chiefly to the improvement of lands

therein for agricultural purposes; or (2) local improvement districts such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or (3) local improvement districts such as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or (4) public-school districts or public-school authorities organized or created for the purpose of constructing, maintaining, and operating public school or public-school facilities; or (5) local improvement districts such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities; or (6) any city, town, village, borough, township, or other municipality (Bankruptcy Act, Chapter X, Sec. 81).

The scope of both Acts is limited as to time—the old Act expiring on January 1, 1940, the new Act on June 30, 1940. In the Report of the Committee on the Judiciary of the House of Representatives, on the Act, its aim is stated:

> The Committee on the Judiciary is not unmindful of the sweeping character of the holding of the Supreme Court above referred to, and believes that H. R. 5969 is not invalid or contrary to the reasoning of the majority opinion in the 5-to-4 decision. The act which was declared unconstitutional designated the instrumentalities included in

its provisions as political subdivisions of the State, and the Supreme Court determined that it was beyond the power reposed in Congress by article I, section 8, clause 4, of the Federal Constitution. "To establish * * * uniform laws on the subject of bankruptcies," to pass an act to interfere with the States in the control of their fiscal affairs.

The bill here recommended for passage expressly avoids any restriction on the powers of the States or their arms of government in the exercise of their sovereign rights and duties. No interference with the fiscal or governmental affairs of a political subdivision is permitted. The taxing agency itself is the only instrumentality which can seek the benefits of the proposed legislation. No involuntary proceedings are allowable and no control or jurisdiction over that property and those revenues of the petitioning agency necessary for essential governmental purposes is conferred by the bill.

As the statute which was declared unconstitutional was held to be within the subject of bankruptcies and uniform in its application, a fortiori, the present bill is adequately related to the general subject of bankruptcies, and does not conflict with the fifth amendment of the Federal Constitution as to due process of law (Report No. 517, 75th Congress, First Session).

It is evident that the Committee assumed that the old statute had been declared unconstitutional

merely because the Congress had used the generic phrase "any municipality or other political subdivision of any state." The new Act seeks to overcome this infirmity by enumerating specifically certain tax instrumentalities without grouping them under a generic title.

But the old Act included specifically *irrigation districts, as does the new.* And the new Act includes specifically *municipalities* as did the old.

The new Act attempts to draw a distinction between taxing bodies which are true governmental subdivisions—such as counties, cities, villages, boroughs, and those which are government agencies of limited scope or between what are strictly municipal corporations and public or quasi-municipal corporations, of more limited scope. The distinction is made often in public law, especially in dealing with the power to tax and liability for tort, between strictly governmental and proprietary functions. (See *Helvering* v. *Powers* (1934), 293 U. S. 214; *Ohio* v. *Helvering* (1934), 292 U. S. 360; *Brush* v. *Commissioner* (1937), 300 U. S. 352; *Yolo* v. *Modesto Irrigation District* (1932), 216 C. 274; 13 P (2) 908).

But a governmental body does not lose its character as such merely because it may engage in activities of a proprietary nature. If it is an agency of the state for the performance of certain functions, the fact that the functions are limited does not alter its status. An agency of the state for the performance of governmental functions it still re-

mains. Ultimately, the test is, Does it have the attributes of sovereignty? Do its activities constitute a public as distinguished from a private enterprise? In carrying out its functions, does it exercise that great prerogative which belongs to sovereignty only—the power to tax and assess property within its boundaries for the upkeep of its activities? If it does, then it is a state agency or instrumentality, although it does not fit into any of the old rubrics under which governmental agencies were classified in less complex days—villages, towns, cities, boroughs, and the like.

As I read the decision in *Ashton* v. *Cameron County District, supra,* it is grounded upon this proposition.

The gist of the majority opinion is contained in the statement:

> Like any sovereignty, a State may voluntarily consent to be sued; may permit actions against her political subdivisions to enforce their obligations. Such proceedings against these subdivisions have often been entertained in federal courts. But *nothing in this tends to support the view that the Federal Government, acting under the bankruptcy clause, may impose its will and impair state powers—pass laws inconsistent with the idea of sovereignty*" (*Ashton* v. *Cameron etc.,* 297 U. S. 513, 531). [Italics added.]

A dissenting opinion often helps clarify the import and meaning of the majority opinion.

The minority opinion does not seek to draw any distinction between public or quasi-municipal bodies and true state subdivisions. As the court *was not dealing with a municipality, but with a water and irrigation district,* it is quite certain that the minority represented by the Chief Justice, Mr. Justice Brandeis, Mr. Justice Stone, and Mr. Justice Cardozo, who wrote the opinion, would have based their dissent upon the proposition that, granted the principles of the majority opinion, the water district, because of its limited powers, was not a political subdivision of the state. They did not do this. Instead, they asserted boldly that, while immunity from federal bankruptcy acts would attach to the state, it should not attach to local governmental units. Mr. Justice Cardozo says:

> There is room at least for argument that within the meaning of the Constitution the bankruptcy concept does not embrace the states themselves. In the public law of the United States, a state is a sovereign or at least a quasi-sovereign. Not so, *a local governmental unit, though the state may have invested it with governmental power.* Such a governmental unit may be brought into court against its will without violating the Eleventh Amendment. *Lincoln County* v. *Luning,* 133 U. S. 529; *Hopkins* v. *Clemson College,* 221 U. S. 636, 654; It may be subjected to mandamus or to equitable remedies. See, e. g. *Norris* v. *Montezuma Valley Irrigation District,* 248 Fed. 369, 372; *Tyler*

*County* v. *Town*, 23 F. (2) 371, 373; *"Neither public corporations nor political subdivisions are clothed with that immunity from suit which belongs to the State alone by virtue of its sovereignty." Hopkins* v. *Clemson College, supra* (*Ashton* v. *Cameron Co., etc., supra*, at 542). [Italics added.]

It is evident to me that the decision was not grounded upon the fact that the power of the Texas Legislature to establish water districts was derived from the general constitutional provision permitting the creation of political subdivisions of the state with power to sue and be sued, issue bonds, levy and collect taxes. The majority opinion intended to apply the limitation to *all* "taxing agencies" which exercise, under the authority of the State, the attributes of sovereignty. That this is the import of the decision is also shown by what the Court says about it in *Brush* v. *Commissioner*, 300 U. S. 352.

There the Court was considering the immunity of state governmental agencies from federal taxation. It held that a municipality in supplying water to its inhabitants engaged in a governmental function which brought immunity from federal income tax to an engineer employed in its Water Department. Speaking of the scope of *Ashton* v. *Cameron County District, supra*, the Court said:

> We recently have held that the bankruptcy statutes could not be extended to municipalities or other political subdivisions of a state: *Ashton* v. *Cameron County Water District*,

298 U. S. 513. *The respondent there was a water-improvement district organized by law to furnish water for irrigation and domestic uses.* We said (pp. 527–528) that respondent was a political subdivision of the state "created for the local exercise of her sovereign powers * * *. Its fiscal affairs are those of the State, not subject to control or interference by the National Government, unless the right so to do is definitely accorded by the Federal Constitution." In support of that holding, former decisions of this court with respect to the immunity of states and municipalities from federal taxation were relied upon as apposite. *The question whether the district exercised governmental or merely corporate functions was distinctly in issue.* The petition in bankruptcy alleged that the district was created with power to perform "the proprietary and/or corporate function of furnishing water for irrigation and domestic uses * * *." The district judge held that the district was created for the local exercise of state sovereign powers; that it was exercising "a governmental function"; that its property was public property; that it was not carrying on private business, but public business. That court, having denied the petition for want of jurisdiction, the district submitted a motion for a new trial in which it assigned, among other things, that the court erred in holding that petitioner was created for the purpose of performing functions, "for the reason that the Courts of

> Texas, as well as the other Courts of the Nation, *have uniformly held that the furnishing of water for irrigation was purely a proprietary function * * *." Substantially the same thing was repeated in other assignments of error.* In the petition for rehearing in this court, the district challenged our determination that respondent was a political subdivision of the state "created for the local exercise of her sovereign powers," and asserted to the contrary that the facts would demonstrate that *"respondent is a corporation organized for essentially proprietary purposes." It is not open to dispute that the statements quoted from our opinion in the Ashton case were made after due consideration, and the case itself decided and the rehearing denied in the light of the issue thus definitely presented.* Compare *Bingham* v. *United States*, 296 U. S. 211, 218–219 (*Brush* v. *Commissioner*, 300 U. S. 352, 368–369). [Italics added.]

(And see *Southern Sierras Power Company* v. *Imperial Irrigation District* (1937), 87 Fed. (2) 353.)

It is clear that the Court did not draw any line between governmental functions exercised by municipal corporations and governmental functions exercised by a public or quasi-municipal corporation of more limited scope. The distinction it drew was between *governmental and corporate functions.* Corporate functions are functions which may be

exercised by any private corporate body. They do not partake of a public nature.

Public functions, performed by an agency created by the State, whose officers are elected by voters having the qualifications of general electors of the State, and which exercises the powers of eminent domain and taxation—the latter two among the two most important attributes of sovereignty and without which there could be no sovereignty—are clearly governmental.

The irrigation district, which seeks relief under this enactment, is of this character. It is one of the instrumentalities of the State, which fall under the interdict of *Ashton* v. *Cameron, etc., supra.* Since the enactment in 1887, of the first Irrigation District Act in California, commonly known as the "Wright Act," California courts have had many occasions to determine the character of the districts created under it. So has the Supreme Court of the United States in upholding the Act. A California irrigation district, while not a political subdivision of the State, is a public corporation for municipal purposes and its officers are public officers of the State. (See *Fallbrook Irrigation District* v. *Bradley* (1896) 164 U. S. 112; *In re Madera Irrig. Dist.* (1891) 92 C. 296, 28 P. 272; *Lindsay-Strathmore Irrig. Dist.* v. *Superior Court* (1920) 182 C. 315, 187 P. 1056; *Turlock Irrig. Dist.* v. *White* (1921) 186 C. 183, 198 P. 1060; *Crawford* v. *Imperial Irrig. Dist.* (1927) 200 C. 318, 253 P. 726; *Wood* v. *Imperial Irrig. Dist.* (1932) 216 C. 748,

17 P. (2) 128; *Yolo* v. *Modesto Irrig. Dist.* (1932) 216 C. 748, 13 P. (2) 908;) The case last cited contains one of the latest declarations of the Supreme Court of California on the subject. An irrigation district is there denominated *"a quasi-municipal corporation."* In *Morrison* v. *Smith Brothers, Inc.* (1930) 211 C. 36, 40, 293 P. 53, irrigation districts are called *"state agencies performing a governmental function."* In *Sutro Heights Land Co.* v. *Merced Irrig. Dist.* (1931) 211 C. 670, 690, 296 P. 1098, an irrigation district is referred to as *"an agency of the state, and the use to which water owned and controlled by it is put to a public use."* The same court, in order to give to irrigation districts immunity from liability for torts, considers them *state agencies.* (See *Whiteman* v. *Anderson-Cottonwood Irrigation District* (1922) 60 C. A. 234, 212 P. 706; *Nissen* v. *Cordua Irrig. Dist.* (1928) 204 C. 545, 269 P. 171; *Morrison* v. *Smith Bros.* (1930) 211 C. 36, 293 P. 53; *Yolo* v. *Modesto Irrig Dist., supra.*) (And on the general nature of instrumentalities of this character, as *state agencies performing functions of government,* see *Houck* v. *Little River Drainage District* (1915) 239 U. S. 254.)

Irrigation in California is "a public use" and the power of eminent domain may be exercised in behalf of it (Constitution of California, Art. I, Sec. 14; California Code of Civil Procedure, Sec. 1241; States, 1911, p. 1407).

The manner in which irrigation districts are created, the fact that they are called into being by an act of the Supervisors of the County in which the major part of the lands are located, upon petition of the property owners, that the officers of the district are elected by a vote not of property owners, but of *all electors* within the district, the fact that the officers are subject to recall, as are all other officers of the State, the fact that before bonds are issued by the Board of Directors of an irrigation district for the purpose of constructing or acquiring works or other property, the plans for such works and the amount of the bonds to be issued, must be approved by the California Districts Securities Commission, consisting of the State Attorney General, the State Engineer, the Superintendent of Banks and two other members appointed by the Governor of the State, who must report on the feasibility of the project—these, and other facts, serve to show the character of an irrigation district as a public instrumentality and agency of the State, subservient to it (Stats. 1897, p. 254; Stats. 1931, p. 2263).

Within their limited scope, irrigation districts exercise the peers of sovereignty. Like sovereigns, they enjoy immunity from liability for torts. They owe their existence to the State, and exercise state functions within their area, just as effectively as municipalities. Clearly, they are of the same type as the water and irrigation company which was before the Supreme Court in *Ashton* v. *Cameron*

*County Water District, supra,* and of which the Court said:

> that the right to borrow money is essential to its operations. *Houck* v. *Little River Drainage District,* 239 U. S. 261–263; *Perry* v. *United States,* 294 U. S. 331. Its fiscal affairs are those of the State, not subject to control or interference by the National Government, unless the right so to do is definitely accorded by the Federal Constitution (*Ashton* v. *Cameron, etc., supra,* at 528).

I feel compelled by this decision to hold that the new enactment, Chapter X, of the Bankruptcy Act, insofar as it applies to irrigation districts of the type of the petitioner, is constitutionally vulnerable, as was the old.

As a student, exercising private judgment, I agree with the conclusion of the dissenters that immunity from interference through federal bankruptcy laws, even if applicable to states, should not be extended to state instrumentalities, whether they be municipal, quasi-municipal, or public corporations. However, as a judge of a lower court, I cannot exercise private judgment, but must follow the opinion of the majority, which, as I read it, extends the immunity to *all* governmental agencies created by a State for the performance of public functions.

The motion to dismiss will be granted.

Exception to the petitioners and the intervenors.

Dated this 13th day of November 1937.

LEON R. YANKWICH,
*United States District Judge.*

# In the District Court of the United States for the Southern District of California, Northern Division

No. 4575

IN THE MATTER OF THE PETITION OF LINDSAY-STRATHMORE IRRIGATION DISTRICT, AN INSOLVENT TAXING AGENCY, FOR CONFIRMATION OF A PLAN FOR THE COMPOSITION AND READJUSTMENT OF ITS DEBTS

## JUDGMENT OF DISMISSAL

The motion of Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder as trustee for Eva A. Parrington trust, G. A. Moss, and James H. Jordan, creditors of Lindsay-Strathmore Irrigation District, to dismiss this cause, and the return of said creditors to the Order to Show Cause Why an Injunction Should Not Issue and Why Interlocutory Decree Making Plan Temporarily Operative Should Not Be Entered herein coming on regularly to be heard by the Court the 8th day of November 1937, and it

appearing that in this cause Lindsay-Strathmore Irrigation District filed its verified petition setting forth a plan for composition and readjustment of its debts under Sections 81, 82, and 83 of Chapter X of the National Bankruptcy Law, as amended, and that this Court made an Order Approving the Petition as Properly Filed and for Notice to Creditors on September 21, 1937, and that this Court on September 22, 1937, made an Order to Show Cause Why an Injunction Should Not Issue and Why Interlocutory Decree Making Plan Temporarily Operative Should Not Be Entered, and fixed Monday the 11th day of October 1937, at Fresno, California, as the time and place for the return to said Order; said creditors of said District, bondholders thereof, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, trustee for Eva Parrington trust, C. A. Moss and James H. Jordan, having made their return to said Order showing cause why an injunction should not issue and why an interlocutory decree making the plan temporarily operative should not be entered; and James Irvine, one of said creditors, having filed herein his proof of claim as required by the Court's order, from which it appears that he is a creditor of Lindsay-Strathmore Irrigation District and the owner and holder of bonds

of said district, described in the petition herein, in the principal amount of $18,500.00, of which bonds in the amount of $14,000.00 have matured, and attached to which are interest coupons in the amount of $3,825.00 which have matured, and which bonds and coupons have all been severally presented for payment;

And it further appearing that said James Irvine and the other said creditors, as shown by their return, are creditors of the Lindsay-Strathmore Irrigation District and the owners and holders of bonds and interest coupons of said District adversely affected by the proposed plan for composition and readjustment of the debts of said District, and the said creditors having duly made their motion to dismiss this cause, which said motion for dismissal and return to said order were based, amongst other things, upon the unconstitutionality of the said Sections 81, 82, and 83 of the Bankruptcy Act of 1898, as amended, and said return and motion coming on regularly to be heard by the Court on the 11th day of October 1937;

And it appearing therefrom that the constitutionality of the statutes aforesaid was drawn in question by the pleadings of the said creditors, this Court certified such fact to the Attorney General of the United States, and upon his application the case was duly continued to November 8, 1937, whereupon an Order was made permitting the Attorney General of the United States to intervene

as a party to said cause and to be heard on the question of the constitutionality of the Act, an exception being allowed to the respondent creditors;

And the said return of the Order having been submitted to the Court and the motion to dismiss the cause having been likewise submitted to the Court and by the Court considered, and the Court being now fully advised in the premises, determines that Sections 81, 82, and 83 of the Bankruptcy Act of 1898, as amended, are unconstitutional and the proceedings taken thereunder void;

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the said ORDER TO SHOW CAUSE WHY INJUNCTION SHOULD NOT ISSUE AND WHY INTERLOCUTORY DECREE MAKING PLAN TEMPORARILY OPERATIVE SHOULD NOT BE ENTERED be and the same is hereby vacated and set aside and the PETITION OF LINDSAY-STRATHMORE IRRIGATION DISTRICT HEREIN FOR CONFIRMATION OF A PLAN FOR THE COMPOSITION AND READJUSTMENT OF ITS DEBTS be and the same is hereby dismissed with prejudice, solely upon the ground that the statute under which the proceeding is brought is unconstitutional. An exception to this order and judgment is hereby allowed to the debtor, Lindsay-Strathmore Irrigation District, and to the intervenor.

Dated: December 2nd, 1937.

LEON R. YANKWICH,
*United States District Judge.*

Approved as to form as provided in Rule 44.

MITCHELL, SILBERBERG, ROTH & KNUPP,
JAMES R. MCBRIDE,
By GUY KNUPP,
*Attorneys for Lindsay-Strathmore Irrigation District.*

BEN HARRISON, *U. S. Dist. Atty.,*
*Attorney for Intervenor.*

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